

STARKER v. UNITED STATES
35 AFTR 2d 75-1550, 75-1 U.S.T.C. ¶9443 (1975)

Editor's Summary

Key Topics

LIKE-KIND EXCHANGE

- timberland for timberland
- promise for future conveyance of like-kind property

Facts

The taxpayer conveyed timberlands to two corporations in 1967 under agreements whereby the corporations in turn promised to convey at a future date other timberlands to the taxpayer. These lands were not owned by the corporations on the date of execution of the original agreement. The taxpayer received no cash payments. The taxpayers treated the transfers to the corporations as nontaxable under Section 1031 in his 1967 return.

District Court

Held: For the Taxpayer. The court held that where a transferor disposes of all interest in property in exchange for a promise for conveyance of like-kind property in the future, the transaction is non-taxable within Section 1031. The court also found that the lack of ownership of like-kind property by the transferee at the time of initial transfer does not prevent non-taxable treatment.

Case Text

Solomon, District Judge: On April 1, 1967, plaintiffs, Bruce and Elizabeth Starker, entered into a "Real Estate Exchange Agreement" with Longview Fibre Company (Longview Fibre). Under this agreement, the Starkers agreed to convey to Longview Fibre certain timberland in Columbia County, Oregon, and Longview Fibre agreed to transfer similar properties to the Starkers in the future.

The Starkers conveyed the land to Longview Fibre on April 28, 1967. Thereafter, a credit for \$105,811.00 was entered in Longview Fibre's books in the Starkers' names. This amount was referred to as the "Exchange Value" and was used to compute the amount of property to be transferred to the Starkers by Longview Fibre. The Starkers did not have control over the cash used by Longview Fibre to purchase like-kind properties selected by the Starkers in exchange for their land. Nor did the Starkers have the right under the contract to demand cash in lieu of property. Each year the remaining "Exchange Value" increased six per cent to reflect the increase

in value of the Starkers' land which resulted from growing timber.

Although Longview Fibre agreed to convey "from time to time Oregon timberlands or other real estate acceptable to the [Starkers]", before any conveyance would be made by Longview Fibre the parties had to "agree in writing to the value of any Such parcel to be conveyed in this exchange to [plaintiffs]". If there was a credit balance in the Starkers' names on Longview Fibre's books on or after April 1, 1972, Longview Fibre would have the right to pay in cash the amount of the remaining credit balance to the Starkers.

Longview Fibre conveyed eight different parcels of land to the Starkers during the period 1968-1972; the first conveyance was on October 7, 1968, and the last on January 17, 1972. At the end of the transactions, there was a zero balance and no money was paid to the Starkers.

Also on April 1, 1967, the Starkers entered into a "Land Exchange Agreement" with Crown Zellerbach Corporation (Crown Zellerbach). The Crown Zellerbach agreement contained provisions which were almost identical to those in the Longview Fibre agreement. Under it, the Starkers were required to convey to Crown Zellerbach certain timberland located in Columbia County, Oregon. They conveyed the land on May 31, 1967

A credit for \$73,500.00 was entered in Crown Zellerbach's books for the Starkers. This amount, referred to as the "Exchange Value", was to be reduced by the agreed value of the properties which Crown Zellerbach would later convey to the Starkers. Crown Zellerbach conveyed three parcels of land to the Starkers, all in 1967. Their total value equalled the "Exchange Value", and no cash was paid to the Starkers.

In their income tax returns for the year 1967, the Starkers treated both the Longview Fibre and the Crown Zellerbach transfers as tax-exempt transfers under Section 1031 of the internal Revenue Code (26 U.S.C. § 1031). The IRS concluded that these transactions were not tax exempt and assessed a tax deficiency of \$35,248.41. On June 30, 1969, the Starkers paid the deficiency and filed a claim for refund, which the IRS disallowed. The Starkers timely filed this action.

The sole issue is whether Section 1031 of the Internal Revenue Code covers transactions in which a taxpayer disposes of all his rights in property for a promise from the transferee to convey like-kind properties in the future.

In my view, the transfers qualify for non-recognition treatment under Section 1031 of the Internal Revenue Code.

I find that the plaintiffs held the properties which they conveyed to Longview Fibre and Crown Zellerbach for productive use in their trade or business or for investment.

I further find that they exchanged these properties solely for properties of alike kind to be held by them either for productive use in their trade or business or for investment within the meaning of Section 1031(a) of the Internal Revenue Code.

I further find that the plaintiffs did not intend to sell the properties to Longview Fibre or Crown Zellerbach and would not have conveyed the properties to them without an exchange agreement.

I recognize that neither Longview Fibre nor Crown Zellerbach at the time the exchange agreements were executed owned the Specific properties which they transferred or conveyed to the plaintiffs. Nevertheless, I do not believe that this lack of ownership prevents plaintiffs from obtaining non-recognition treatment under Section 1031 of the Internal Revenue Code,

There are no decisions directly in point, but in my View *Alderson v. United States* [63-2 USTC ¶9499], 317 F.2d 790 (9th Cir. 1963), requires this result.

This opinion shall constitute findings of fact and conclusions of law under F. R. Civ. P.52(a).